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THE FRONT

Biotech Food Fight

Eager to foist biotechnology on an unwelcoming world, the U.S. government announced in May plans to file a World Trade Organization (WTO) case against the European Union, challenging the EU's de facto moratorium on the approval of new genetically modified crops.

"The EU's moratorium violates WTO rules," argued U.S. Trade Representative Robert Zoellick in announcing the U.S. intention to bring a case. "We've waited patiently for five years for the EU to follow the WTO rules and the recommendations of the European Commission, so as to respect safety findings based on careful science."

The European Union has not approved a new biotech product for market since October 1998, on the grounds that its regulatory regime was not equipped to address the special challenges posed by genetic modification.

The EU responded vigorously to the U.S. allegations, with the European Commission calling the U.S. plans to initiate a case "legally unwarranted, economically unfounded and politically unhelpful."

"We have been working hard in Europe to complete our regulatory system in line with the latest scientific and international developments," said David Byrne, EU Commissioner for Health and Consumer Protection. "The finalization process is imminent. This is essential to restore consumer confidence in GMOs [genetically modified organisms] in Europe."

Byrne said that it is the lack of consumer demand for GM-products that accounts for the low sales of GMOs in the EU market. "Unless consumers see that the authorization process is up to date and takes into account all legitimate concerns, consumers will continue to remain skeptical of GM products."

If it proceeds to a full-blown WTO case -- and by June it appeared more likely it would, as U.S.-EU negotiations failed to make any progress -- the dispute will be by far the most high profile of any case ever to come before a WTO dispute settlement panel. Under WTO rules, a panel -- made up exclusively of trade experts -- would hear the case and issue a binding ruling. If the United States prevails, the EU would have to change its offending rules or accept trade sanctions from or pay fines to the United States.

At stake in the dispute is not merely the EU's moratorium, but its emerging regulatory regime for biotech, and ultimately the right of any WTO member to undertake consumer and environmental regulations based on the Precautionary Principle.

The Precautionary Principle places the burden on the entity introducing a new product into the environment or food supply to show it is safe. The Precautionary Principle suggests erring on the side of safety, not recklessness. Its proponents believe it may be the single most important concept to guide the world to a sustainable future. Business opponents ascribe a similar importance to the Precautionary Principle, fearing it could dramatically limit their ability to operate as they see fit.

The Africa Card

On the political side, the United States has argued that EU rules not only hurt U.S.

farmers who would like to export biotech products to Europe (not to mention U.S. companies that would like to sell biotech seeds in Europe), but Africa as well.

The U.S. claim is that because Europe refuses to import biotech products, African countries are refusing to plant genetically modified seeds that could increase agricultural yield.

"By widening the use of new high-yield bio-crops and unleashing the power of markets," said President Bush in May, "we can dramatically increase agricultural productivity and feed more people across the continent. Yet, our partners in Europe are impeding this effort. They have blocked all new bio-crops because of unfounded, unscientific fears. This has caused many African nations to avoid investing in biotechnologies, for fear their products will be shut out of European markets."

This aspect of the controversy has become particularly charged over the past year, with some African countries refusing U.S. food aid of unmilled grain on the grounds that it would contain genetically modified products, which might escape and contaminate domestic seed.

The food aid argument has resonated in some media, and the EU responded vigorously to the U.S. charges. Pointing out that African countries had genuine fears about the local impacts of introducing biotech products, the European Commission said it "finds it unacceptable that such legitimate concerns are used by the United States against the EU policy on GMOs. The European Commission believes that it is the legitimate right of developing countries' governments to fix their own level of protection and to take the decision they deem appropriate to prevent unintentional dissemination of GM seeds."

"Food aid to starving populations should be about meeting the urgent humanitarian needs of those who are in need," said the European Commission. "It should not be about trying to advance the case for GM food abroad (while staying away from the international consensus such as the Cartagena Protocol [a global treaty -- of which the United States is not a party -- set to go into force in September and requiring advanced informed consent from importing countries for biotech products]), or planting GM crops for export, or indeed finding outlets for domestic surplus, which is a regrettable [element] of the U.S. food aid policy."

Countless environmental and development groups in Africa and elsewhere in the Third World have echoed the EU position.

Throwing Precaution to the Wind

Whether or not there is a moratorium, the EU has proceeded with efforts to develop a new regulatory framework for biotech.

This new framework is arguably as or more worrisome to biotech industry interests as the temporary ban on genetically modified products.

In March 2001, the EU adopted the first component of a biotech regulatory system. This went into effect in October 2002.

Under the EU system, companies seeking to market biotech products must first submit an application including a full environmental risk assessment. If any EU country

objects to that the risks are too great to approve the product, the European Commission seeks an opinion from the Scientific Committee (and the European Food Safety Authority in the future) and then makes a decision.

The EU is further seeking to adopt legislation on biotech labeling and traceability. The labeling requirement would be a mandatory obligation by producers to label their foods as containing GMOs or as GMO-free. The traceability requirement would oblige food manufacturers to be able to trace any product back to the farm, to ensure a product labeled as GMO-free was in fact not contaminated with a biotech ingredient along the way.

Although the current complaint by the United States does not address these rules, the biotech industry despises them, and argues that they too violate WTO rules. Given the U.S. government's ardent support for biotech, it is quite possible that, however the dispute over the EU moratorium is resolved, the United States will file a WTO challenge to the EU's biotech regulatory rules.

Neither the moratorium nor the existing and proposed EU rules discriminate against foreign producers -- domestic and foreign biotech purveyors are treated identically.

Nonetheless, the United States says the moratorium violates WTO rules, with a logic that applies also to the EU regulations. U.S. fact sheets explain the U.S. case like this: "The WTO agreement on sanitary and phytosanitary measures (SPS) recognizes that countries are entitled to regulate crops and food products to protect health and the environment. The WTO SPS agreement requires, however, that members have ësufficient scientific evidence' for such measures, and that they operate their approval procedures without ëundue delay.' Otherwise, there is a risk countries may without justification use such regulations to thwart trade in safe, wholesome and nutritious products."

Less important is the "undue delay" issue than the claim that the EU approach is not backed up by "sufficient scientific evidence."

As Lori Wallach of Public Citizen's Global Trade Watch says, "The science on the long-term health and environmental effects of GMOs is incomplete, making limits on GMOs a prudent policy to avoid possibly irreversible damage to public health or the environment." Such an approach embodies the Precautionary Principle.

But the Precautionary Principle itself conflicts with WTO mandates.

Explains Wallach: "The WTO contains extensive subjective, value-oriented rules constraining signatory countries' domestic food safety policies that limit the subject matter, level of protection and design of domestic food safety policies. One such WTO rule puts the burden of proof on countries seeking to regulate a product to show it is dangerous. This WTO rule means that policies based on the Precautionary Principle -- that a manufacturer must show a product safe over the long term before it goes on the market -- are forbidden."

A May report by the National Foreign Trade Council (NFTC), a U.S. business grouping that has been extremely effective in setting the corporate agenda on trade-related issues -- and then turning the agenda into law and policy -- highlights the priority corporations place on crushing the Precautionary Principle.

The EU rules on biotech are only the most prominent of precautionary rules that the NFTC argues conflict with WTO rules. Others that the NFTC say violate WTO provisions include EU rules requiring electronics manufacturers to take legal responsibility for products at the end of their consumer life, an EU chemicals strategy (known as "REACH") which will require chemical manufacturers to safety test their products before putting them on the market, and a directive prohibiting use in cosmetics of carcinogenic or mutagenic substances.

The NFTC report makes clear how much corporations believe is at stake in the biotech case.

Consumer and environmental advocates agree.

"This case will become Exhibit No. 1 in the growing worldwide attack on the WTO's legitimacy," says Wallach. "The fundamental issue here is democracy: The people eating the food or living in the environment that could be affected must decide domestic policy, not some secretive WTO tribunal of three trade experts."

-- *Robert Weissman*

Tobacco Treaty Triumph

A new global treaty on tobacco is poised to help combat the world's single biggest source of death and disease.

The World Health Assembly, the governing body of the World Health Organization (WHO) and made up of most nations on the planet, passed the treaty unanimously in May. The treaty, known as the Framework Convention on Tobacco Control (FCTC), is the first global public health treaty.

The FCTC will come into force once 40 countries sign and ratify it. By June, 40 nations had already signed. A signature does not bind countries, but represents a good faith commitment to abide by the treaty's principles and pursue ratification. Dr. Derek Yach, WHO's chief of noncommunicable diseases, says he expects ratification by the requisite 40 countries within a year.

"This treaty makes us accountable to the world," says Dr. Gro Harlem Brundtland, outgoing director general of WHO. "It also makes the world accountable to itself. We are racing against time that clocks 5 million tobacco deaths in the world every year."

Tobacco control groups worldwide applauded adoption of the treaty. "The world's nations today have risen to the challenge posed by the escalating global death toll from tobacco use by adopting a strong global response, the Framework Convention on Tobacco Control," said a coalition of U.S. groups made up of the American Cancer Society, the American Heart Association, the American Lung Association, Action on Smoking and Health (ASH) and the Campaign for Tobacco-Free Kids. "If properly implemented by individual nations, this tobacco treaty will represent an historic turning point in the fight against tobacco use and save millions of lives around the world."

With tobacco-related disease already accounting for approximately 5 million deaths

per year, the locus of the tobacco epidemic is now shifting to developing countries. In two decades, tobacco will kill 10 million a year, according to WHO estimates, 7 million in developing countries.

"The tobacco treaty is especially important to developing nations that the multinational tobacco companies have targeted as their most promising growth markets," said the coalition of U.S. groups. "It gives nations powerful new tools to protect the health of their citizens from the tobacco industry's deceptions and slick advertising."

Most developing countries worked hard to fashion a substantive treaty offering the prospect of tangible public health benefits. They had to confront the United States, viewed as a proxy for Philip Morris in the negotiations, along with Germany, Japan and other countries which resisted strong measures.

"Throughout this historic process, the developing world, led by a block of all 46 African nations, united around protecting the health of their people from the deadly expansion of giant tobacco corporations. Quite simply, this treaty has the potential to save over 10 million lives per year," said Patricia Lambert of the South African delegation.

The treaty commits signatory nations to take a number of steps to strengthen tobacco control within their borders. It also provides a framework for the negotiation of future protocols, legally binding agreements to address specific issues, including many which may have particular cross-boundary aspects.

Among the key provisions of the treaty are elements which require countries to:

- Ban direct and indirect tobacco advertising (with an exception for countries whose constitutional principles prevent such bans; those nations are directed to adopt measures as far as constitutionally permissible);
- Require large health warnings on cigarette packages, taking up a minimum of 30 percent of the principal delay area, and hopefully 50 percent;
- Prohibit deceptive terms in advertising, which tobacco control advocates contend includes the use of terms like "light," "low" and "mild" in cigarette names; and
- Require manufacturers to disclose the content of tobacco products to governments.

The United States registered objections to the treaty right up until the end, suggesting it intended to seek modification after negotiations were completed but before the treaty was approved at the World Health Assembly. In the interim period, U.S. Health and Human Services Secretary Tommy Thompson announced the U.S. was withdrawing its objections.

U.S. officials have not provided any clear reason for the U.S. turnabout. Thompson refused to answer questions on the topic.

Tobacco control advocates have speculated that it might have been due to public pressure, but worry about a more sinister motivation. Some fear that the United States might sign and ratify the treaty so that it may participate in ongoing negotiations over interpretations and elaborations -- and continue to oppose public health measures at the behest of the tobacco industry.